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12 Jamie Whitlock

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14

15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE DISTRICT OF ARIZONA

17

18 Jamie Whitlock,
19 Plaintiff,
20 vs.
21 Tate & Kirlin Associates, Inc.; and DOES
22 1-10, inclusive,
23 Defendants.

24 Case No.:
25
26

27 **COMPLAINT**
28

1 For this Complaint, the Plaintiff, Jamie Whitlock, by undersigned counsel,
2 states as follows:
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the Fair Debt
6 Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), and the invasions of
7 Plaintiff's personal privacy by the Defendants and its agents in their illegal efforts to
8 collect a consumer debt.
9

10 2. Original and supplemental jurisdiction exists pursuant to 28 U.S.C. §§ 1331,
11 1367.

12 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that
13 Defendants transact business here and a substantial portion of the acts giving rise to
14 this action occurred here.
15

16 **PARTIES**

17 4. The Plaintiff, Jamie Whitlock (hereafter "Plaintiff"), is an adult individual
18 residing in Mesa, Arizona, and is a "consumer" as the term is defined by 15 U.S.C. §
19 1692a(3).
20

21 5. The Defendant, Tate & Kirlin Associates, Inc. (hereafter "Tate"), is a
22 Pennsylvania business entity with an address of 2810 Southampton Road,
23 Philadelphia PA 19154, operating as a collection agency, and is a "debt collector" as
24 the term is defined by 15 U.S.C. § 1692a(6).
25
26
27
28

1 6. Does 1-10 (the “Collectors”) are individual collectors employed by Tate and
2 whose identities are currently unknown to the Plaintiff. One or more of the Collectors
3 may be joined as parties once their identities are disclosed through discovery.
4

5 7. Tate at all times acted by and through one or more of the Collectors.
6

7 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

8 A. **The Debt**

9
10 8. The Plaintiff allegedly incurred a financial obligation (the “Debt”) to an original
11 creditor (the “Creditor”).
12

13 9. The Debt arose from services provided by the Creditor which were primarily
14 for family, personal or household purposes and which meets the definition of a “debt”
15 under 15 U.S.C. § 1692a(5).
16

17 10. The Debt was purchased, assigned or transferred to Tate for collection, or Tate
18 was employed by the Creditor to collect the Debt.
19

20 11. The Defendants attempted to collect the Debt and, as such, engaged in
21 “communications” as defined in 15 U.S.C. § 1692a(2).
22

23 B. **Tate Engages in Harassment and Abusive Tactics**

24 12. Tate called Plaintiff and misled her into believing that it was collecting a Debt
25 for her student loan company.
26

1 13. Based upon Tate's miscommunications, Plaintiff reached an arrangement to pay
2 the Debt with Tate in which Tate would automatically withdraw \$50.00 a month from
3 Plaintiff's bank account.
4

5 14. For the past three (3) months Tate has automatically withdrawn funds from
6 Plaintiff's bank account.
7

8 15. Since making the arrangement, Plaintiff has learned that the Debt Tate is
9 collecting on is actually a Debt allegedly owed to the University of Phoenix.
10

11 16. Had Tate been forthright about the Debt, Plaintiff would not have authorized
12 withdrawals from her bank account to the University of Phoenix, because the
13 University of Phoenix was paid in full for any tuition she may have owed them years
14 ago through her student loan(s).
15

16 17. Although Tate is withdrawing money monthly from Plaintiff's account, Tate
17 has continued to place approximately three (3) calls a week to Plaintiff in an attempt
18 to collect the Debt.
19

20 18. Further, on April 4, 2011, Tate placed a call to Plaintiff's cellular telephone at
21 5:10a.m. in an attempt to collect the Debt.
22

23 19. Tate promised to send Plaintiff written notification five (5) days prior to each
24 automatic withdrawal from Plaintiff's bank account. However, Plaintiff has received
25 each of these written notifications approximately one (1) week after Tate had already
26 withdrawn funds from her bank account.
27

1 C. **Plaintiff Suffered Actual Damages**

2
3 20. The Plaintiff has suffered and continues to suffer actual damages as a result of
4 the Defendants' unlawful conduct.

5
6 21. As a direct consequence of the Defendants' acts, practices and conduct, the
7 Plaintiff suffered and continues to suffer from humiliation, anger, anxiety, emotional
8 distress, fear, frustration and embarrassment.

9
10 22. The Defendants' conduct was so outrageous in character, and so extreme in
11 degree, as to go beyond all possible bounds of decency, and to be regarded as
12 atrocious, and utterly intolerable in a civilized community.

13
14 **COUNT I**

15 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

16 **15 U.S.C. § 1692, et seq.**

17
18 23. The Plaintiff incorporates by reference all of the above paragraphs of this
19 Complaint as though fully stated herein.

20
21 24. The Defendants contacted the Plaintiff before 8:00 a.m. and after 9:00 p.m., in
22 violation of 15 U.S.C. § 1692c(a)(1).

23
24 25. The Defendants caused a phone to ring repeatedly and engaged the Plaintiff in
25 telephone conversations, with the intent to annoy and harass, in violation of 15 U.S.C.
26 § 1692d(5).

1 26. The Defendants misrepresented the character, amount and legal status of the
2 debt in violation of 15 U.S.C. § 1692e(2).
3

4 27. The Defendants employed false and deceptive means to collect a debt, in
5 violation of 15 U.S.C. § 1692e(10).
6

7 28. The Defendants attempted to collect an amount not authorized by the agreement
8 creating the debt, in violation of 15 U.S.C. § 1692f(1).
9

10 29. The Defendants applied payments to a debt that was disputed, in violation of 15
U.S.C. § 1692h.
11

12 30. The foregoing acts and omissions of the Defendants constitute numerous and
13 multiple violations of the FDCPA, including every one of the above-cited provisions.
14

15 31. The Plaintiff is entitled to damages as a result of the Defendants' violations.
16

PRAAYER FOR RELIEF

17 WHEREFORE, the Plaintiff prays that judgment be entered against the
18 Defendants:
19

20 A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against the
21 Defendants;
22

23 B. Statutory damages of \$1,000.00 pursuant to 15 U.S.C.
24 §1692k(a)(2)(A) against the Defendants;
25

26 C. Costs of litigation and reasonable attorney's fees pursuant to
27 15 U.S.C. § 1692k(a)(3) against the Defendants;
28

1 D. Actual damages from the Defendants for the all damages including
2 emotional distress suffered as a result of the intentional, reckless, and/or
3 negligent FDCPA violations in an amount to be determined at trial for
4 the Plaintiff;
5
6 E. Punitive damages; and
7
8 F. Such other and further relief as may be just and proper.

9
10 **TRIAL BY JURY DEMANDED ON ALL COUNTS**
11
12
13

14 DATED: April 21, 2011

LEMBERG & ASSOCIATES, LLC

15
16 By: /s/ Kindra Deneau
17 Kindra Deneau

18 Attorney for Plaintiff
19 Jamie Whitlock